TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 67

F. L. SHUTTLESWORTH, ET AL., PETITIONERS,

vs.

CITY OF BIRMINGHAM.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED FEBRUARY 14, 1962
CERTIORARI GRANTED JUNE 25, 1962

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA, IN AND FOR JEFFERSON COUNTY

No. 20789

CITY OF BIRMINGHAM,

vs.

F. L. SHUTTLESWORTH.

APPEAL BOND—Filed May 4, 1960

The State of Alabama)
) City of Birmingham
Jefferson County)

We, Rev. F. L. Shuttlesworth, principal and Jas Esdale sureties, acknowledge ourselves indebted to the City of Birmingham, a municipal corporation, in the sum of Three Hundred and no/100 Dollars, for the payment of which, well and truly to be made, we bind ourselves, our adminisrators, and executors. But the condition of the above obligation is such, that whereas the above bounden principal was tried and convicted on the charge of Count 1. Aiding and Abetting Sec 824 GCC and has prayed and obtained an appeal to the Circuit Court of Jefferson County, Alabama, from the judgment of the Recorder's Court of the City of Birmingham, adjudging him to pay a fine of One Hundred Dollars, Costs Five Dollars, and to perform hard labor for 180 days, rendered the 4 day of April 1960.

Now, if the said principal shall appear at present Term of the Circuit Court of Jefferson County, Alabama, and from term to term thereafter until discharged by law, then this obligation to be void, otherwise to remain in full force and effect. And as against this obligation we waive all right under the laws of Alabama to claim any personal property as exempt from levy and sale.

Witness our hand and seals this 4 day of April 1960.

Rev. F. L. Shuttlesworth (L.S.), 3232 28 Ave N., Jas Esdale (L.S.), 809 No 21 st., By Lacey Alexander (L.S.), Atty In fact.

Approved 4 day of April 1960.

William Conway, Recorder of the City of Birmingham.

[fol. 2] [File endorsement omitted]

IN THE CIRCUIT COURT OF THE

TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20789

CITY OF BIRMINGHAM, a Municipal corporation, Plaintiff,

v.

F. L. SHUTTLESWORTH, Defendant.

COMPLAINT—Filed October 11, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that F. L. Shuttlesworth, within twelve months before the beginning of this prosecution, and within the City of Birmingham or the police jurisdiction thereof, did incite or aid or abet in the violation of an ordinance of the City, to-wit, Section 1436 of the General City Code of Birmingham of 1944, in that F. L. Shuttlesworth did incite or aid or abet another person to go or remain on the premises of another after being warned not to do so, contrary to and in violation of Section 824 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20789

CITY OF BIRMINGHAM,

vs.

F. L. SHUTTLESWORTH, Defendant.

MOTION TO STRIKE—Filed October 11, 1960

Comes now F. L. Shuttlesworth, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to in this cause.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinances or statutes upon which are founded the complaint in this cause, as applied to this de-
[fol. 3] fendant, as a citizen of the State of Alabama, and of the United States, constitute an abridgment of the freedom of assembly, speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinances or statutes which are the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitute an abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Sections 824 and 1436 of the General City Code of the City of Birmingham, as applied to this defendant, a

Negro citizen of the United States, constitute a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this Court.

Arthur D. Shores, Oscar W. Adams, Jr., Orzell Billingsley, Jr., Peter A. Hall, J. Richmond Pearson, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA
No. 20789

CITY OF BIRMINGHAM,

vs.

F. L. SHUTTLESWORTH, Defendant.

DEMURRERS—Filed October 11, 1960

Comes now F. L. Shuttlesworth, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of [fol. 4] Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prosecution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinances, Sections 1436 and Sections 824 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, are invalid in that they violate Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Sections 1436 and Sections 824 of the 1944 General City Code of Birmingham, Alabama, which support the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitute an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinances as applied to defendant, are unconstitutional on their face in that they are so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinance or Statute in this case, as applied to defendant, constitute an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinances, as applied to defendant, constitute a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, J. Richmond Pearson, Orzell Billingsley, Jr., Oscar W. Adams, Jr., Peter A. Hall,
Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20789

CITY OF BIRMINGHAM, Plaintiff,

vs.

REV. F. L. SHUTTLESWORTH, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 11, 1960

1. The complaint charging defendant, a Negro, with violation of 824 the General City Code of Birmingham of 1944, to-wit, aiding and abetting in the violation of 1436 of the General City Code of Birmingham of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain or after being told to leave is invalid in that the evidence establishes merely that persons alleged to have been aided and abetted by the defendant were peacefully upon the premises of various department stores, an establishment performing an economic function invested with the public interest, as a customer, vsitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude those persons who were alleged to have been aided and abetted by the defendant from the various eating facilities because of their race or color; defendant, at the same time is being denied his right of freedom of speech and assembly in that he has been criminally prosecuted for an alleged peaceful discourse with other citizens of his race in regards to achieving first class citizenship; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the Fourteenth Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of 824 of the General City Code of Birmingham was wholly in-

competent and hearsay evidence upon the grounds that the testimony offered by the City of Birmingham was based on hearsay and that the witness, Detective Pierce, was not recounting the fact personally known to him. Further, that the testimony of the witness, Detective Pierce, was based upon the record of the proceedings in the Recorders Court and the instant proceedings being a trial de novo said records of the proceedings in the Recorders Court are only admissible for the purpose of impeachment. There being no testimony offered by the defendant, any admission of the records of proceedings in the Recorders Court in this proceedings constitutes a violation of the defendant's constitutional rights under the Laws of the State of Alabama and [fol. 6] under the Laws and Constitution of the United States of America specifically those rights secured by the Fourteenth Amendment of the United States Constitution.

3. That even if the evidence offered by the City of Birmingham was held to be legal it only establishes that the prosecution of the defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking, and; otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in Birmingham, Alabama, to permit the defendant, a Negro, and other members of defendant's race from enjoying the access to such stores, facilities, and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The evidence against the defendant, a Negro, in support of the charge of his violation of 824 the General City Code of Birmingham of 1944, clearly indicates that those persons alleged to have acted as a result of the aiding and abetting of the defendant, had accepted an invitation to enter and purchase articles in the various department stores in the City of Birmingham, stores open to the public, but had not been allowed to obtain food service on the same

basis as that offered white persons, because of their race or color; and, that in furtherance of this racially discriminatory practice of the various department stores in the City of Birmingham, the defendant was arrested, thereby violating defendant's rights under the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution, to free speech and the right to peaceful assembly.

Oscar W. Adams, Jr., Orzell Billingsley, Jr., Peter A. Hall, Arthur D. Shores, J. Richmond Pearson, Attorneys for Defendant.

[File endorsement omitted]

[fol. 7]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

Appealed from Recorder's Court
(Aiding & Abetting)

Honorable Geo. Lewis Bailes, Judge Presiding

CITY OF BIRMINGHAM,

vs.

F. L. SHUTTLESWORTH.

JUDGMENT ENTRY—October 11, 1960

This the 11th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the

Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and the Court finds the defendant guilty as charged in the Complaint and thereupon assessed a fine of One Hundred ($100.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of One Hundred ($100.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $100.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said F. L. Shuttlesworth, perform hard labor for the City of Birmingham for fifty-two days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

[fol. 8] It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said F. L. Shuttlesworth, perform additional hard labor for the City of Birmingham for one hundred eighty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to forty-seven and 25/100 ($47.25)

dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Library Tax, $1.00, leaving forty-three and 25/100 ($43.25) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for fifty-eight days, at the rate of 75¢ per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 9]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20789

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

F. L. SHUTTLESWORTH, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause, and with leave of the Court, first had and obtained, and moves this Honorable Court to set aside the verdict and judgment rendered on to-wit the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said Motion sets out and assigns the following, separately and severally:

1. That the Judgment of the Court in said case, is contrary to the law.

2. For that the Judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the Judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the Judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in over-ruling objections, by the defendant to the introduction of evidence on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

11. The Court erred in overruling defendant's demurrers filed in this cause.

12. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

[fol. 10] 13. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances, under which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

14. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

15. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty, without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

16. The Court erred in overruling defendant's Motion to exclude the evidence in this case.

17. That it appeared from the evidence that no owner of the premises involved, had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

18. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

19. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against defendant for trespass on private property.

20. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in the store.

[fol. 11] Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, J. Richmond Pearson, Oscar W. Adams, Jr., Attorneys for defendant.

ORDER OVERRULING

The foregoing Motion being presented in open court, this 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

Geo. Lewis Bailes, Circuit Judge.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

APPEAL BOND TO COURT OF APPEALS—Filed October 11, 1960

The State of Alabama)
Jefferson County)

Know All Men by These Presents, That we Rev. F. L. Shuttlesworth principal, and James Esdale & Willie Esdale as sureties, are held and firmly bound unto the State of Alabama in the sum of Three Hundred Dollars, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents; and we and each of us waive our rights of exemption under the Constitution and laws of the State of Alabama as against this boad.

The Condition of the Above Obligation is Such, That whereas, the above bounden Rev. F. L. Shuttlesworth was on the day of Oct. 11 1960 convicted in the Circuit Court of Jefferson County, Alabama, for the offense of A & Abetting and had assessed against him a fine of One Hundred and 180 days, together with the cost of this prosecution, and on the 11 day of October, 1960, on failure to pay fine was sentenced to perform hard labor for the County for ..... days, and an additional term for the cost, at the rate of seventy-five cents per day, and as additional punishment imposed the defendant was sentenced to perform hard labor for the County for 180 from which sentence the said Rev. F. L. Shuttlesworth has this day prayed and obtained an appeal to the Court of Appeals of Alabama.

Now, if the Said Rev. F. L. Shuttlesworth shall appear and abide such judgment as may be rendered by the Court of Appeals, and if the judgment of conviction is affirmed, or the appeal is dismissed, the said Rev. F. L. Shuttlesworth shall surrender himself to the Sheriff of Jefferson [fol. 12] County, at the County Jail, within fifteen days from the date of such affirmation or dismissal, then this obligation to be null and void, otherwise to remain in full force and effect.

Given under our hands and seals, this the 11 day of Oct., 1960.

Rev. F. L. Shuttlesworth (L.S.), James Esdale (L.S.), Willie Esdale (L.S.), By A. E. Brooks, Atty. (L.S.)

Approved: Julian Swift, Clerk of the Circuit Court of Jefferson County.

[File endorsement omitted]

[fol. 13]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA—CRIMINAL DIVISION

Case No. 20789

CITY OF BIRMINGHAM, Plaintiff,

vs.

F. L. SHUTTLESWORTH, Defendant.

Transcript of Evidence—October 11, 1960

Caption

The Above-Styled Cause came on to be heard before the Hon. George Lewis Bailes, Judge, without a jury, at 10:00 a.m. on the 11th day of October, 1960, when the following proceedings and testimony was heard:

APPEARANCES

Messrs. Watts E. Davis and Bill Walker, Attorneys at Law, Birmingham, Alabama, for the City of Birmingham.

Messrs. Arthur D. Shores, Orzell Billingsley, Peter A. Hall, Oscar Adams and J. Richmond Pearson, Attorneys at Law, Birmingham, Alabama, for the defendant.

Reported by Jimmie Crumley.

Mr. Davis: If Your Honor please, by agreement of counsel we would like, with the Court's permission, to try Charles Billups alone with Rev. F. L. Shuttlesworth on aiding and abetting.

The Court: Whatever you all agree upon.

Mr. Davis: All right.

Mr. Billingsley: Your Honor, on the cases of F. L. Shuttlesworth, 20789 and Charles Billups, 20778, we want to file first Motions to Strike in both cases.

The Court: Motions to Strike the complaint?

Mr. Billingsley: Yes.

[fol. 14] The Court: Are they identical?

Mr. Billingsley: Yes sir, they are identical except for the name.

The Court: Let the Motions to Strike be overruled.

Mr. Billingsley: We take an exception, Your Honor. We also have some demurrers in both cases, Your Honor.

The Court: Let the demurrers be overruled in both cases and an exception noted in each instance.

Mr. Billingsley: I take an exception, if Your Honor please.

The Court: Counsel ready?

Mr. Walker: The City is ready, Your Honor.

Mr. Davis: We would like to have James Gober take the stand.

(Whereupon the witness, James E. Gober was called to the stand and duly sworn.)

Mr. Shores: Your Honor, before any questions are put to this witness we are going to object on the ground that his case is still pending and open and that any questions directed to him with regards to this defendant might tend to incriminate him, and for that reason we object to his testifying.

Mr. Davis: If the Court please, I don't think it is the option of counsel to declare any immunity of this witness. I think it would be entirely up to the witness. I think we are being premature here in that nothing has been asked to tend to incriminate this witness as yet.

Mr. Shores: Your Honor, the further objection is that the case against this witness has not been decided and it may be tending to force the witness to testify against himself in violation of the constitution of the State of Alabama as well as the 14th Amendment to the United States Constitution.

The Court: Well, off the record.

(Off the record.)

Mr. Pearson: If he were not a party to a crime that is alleged, his status would be as he said, he would have to [fol. 15] invoke the statute himself, but since he is a party to a crime that has been alleged and the further question has been invoked, and therefore, the avenues of appeal is still open, and any testimony he gives might be used, if it was later reversed and a new trial ordered, and, so, the option belongs to counsel as well as the defendant.

Mr. Davis: With Your Honor's indulgence, I might denote an authority on this proposition. I refer to the case of City of Mobile versus McCowan Oil Company, 148 Southern, 402. I don't have the Alabama citation, I am sorry to say. In substance, without reading this opinion at length, the Supreme Court of Alabama has stated and has cited a long line of Alabama decisions, as well as Corpus Juris pointed out that the violation of a City Ordinance does not rise to the dignity of a crime as protected by the 5th Amendment to the Constitution of the United States. This is an offense against the City of Birmingham and the Supreme Court has said on many occasions that is not a crime subject to the provision of the 5th Amendment where they might tend to involve themselves. And there are other cases cited in this McCowan Oil Company case I refer to. I think that has been the law of long standing in our state.

Mr. Pearson: I would like to say one thing. Counsel for the City of Birmingham does not say whether the Supreme Court of Alabama was speaking about a trial at city level or a trial at Circuit Court level, which would make a difference. I might concur with him if this trial was down at the City, but he doesn't bring out that point.

Mr. Davis: The offense is still the same, the offense against a City Ordinance that brought a case into this court which was originally in the City which is tried de novo here by their choice.

Mr. Hall: If Your Honor please, even if this was city level and this defendant had been accused of a violation of the City Ordinance, the City could not force him to testify against himself under ordinary circumstances. For all intents and purposes, that is the position the witness finds himself in now. He has been accused and tried for alleged violation of the City Ordinance which, of course, is in Your Honor's bosom at this point. No decision has [fol. 16] been made on it and there is a continuation of the trial so to speak. But what the prosecution is doing at this point is calling the defendant to testify against himself, whether that was in the City or here, and I simply do not believe the Law is such. I don't know, I can't quote pertinent authority, but I don't believe if we were on the city level that a witness could be called to testify against himself. As a matter of fact, on the city level at the time of trial in the City Court no witness was called to testify against himself at that time. They could have been, they weren't.

Mr. Davis: I might make one further observation. That this witness did testify in the earlier proceeding in this same cause, that is, on the lower level before the City Court, and it is my opinion that any immunity he might have had, had this been a crime, would have been waived in the earlier phases of this case. But for the information of counsel, this case, City of Mobile versus McCowan Oil Company, is an appeal from the Equity Court in the Mobile Division. I don't think there is any merit in the argument that that only applies in the City Recorder's Court, this is a case that came out of the Equity Division of the Mobile Circuit Court.

I still urge the further point that the witness has not claimed it and I don't think counsel can claim it for this witness.

The Court: I think the counsel is the alter ego of a defendant probably.

Mr. Davis: For all intents and purposes it hasn't been shown in the record that these Counsel represent this boy in the Shuttlesworth case. I understand they represent him in a sit-in case, but this is not a sit-in case we are trying now. This is the Shuttlesworth and Billups case we are trying.

Mr. Pearson: We represent him in anything that grows out of the conduct of which this came out of. The case is still pending and any evidence he gives now might later be used against him, although it might be limited to impeachment, it certainly could be used against him.

[fol. 17] The Court: Well, I will give him the benefit of it and excuse him. You may be excused.

Mr. Davis: I would like to reserve an exception to the Court's ruling.

(Witness excused.)

Mr. Davis: Call James Albert Davis.

(Whereupon James Albert Davis was called to the witness stand and sworn.)

Mr. Shores: Your Honor, we want to offer the very same objection. He is in the same position as the former witness.

The Court: I didn't remember your name.

The Witness: James Albert Davis.

The Court: Assuming the rule applies either positively or negatively, would it apply the same way to James Albert Davis as to James Gober?

Mr. Davis: I can't see any distinction.

The Court: All right. You may be excused.

Mr. Davis: We reserve an exception.

(Witness excused.)

CHARLES L. PIERCE, called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Davis:

Q. Will you please state your full name to the Court.
A. C. L. Pierce.
Q. By whom are you employed, Mr. Pierce?
A. City of Birmingham.
Q. And in what capacity?
A. Detective.
Q. Were you so employed on March 30th and 31st of 1960?
A. Yes sir.
Q. Were you so employed on April 1, 1960?
A. Yes sir.
Q. Mr. Pierce, were you present in the City's Recorder's Court, the Honorable William Conway presiding, on the evening of April 1, 1960 at which time Rev. F. L. Shuttles- [fol. 18] worth, or F. L. Shuttlesworth, was on trial for violation of a City Ordinance?
A. Yes sir, I was there.
Q. On that occasion did a James Gober make any statement under oath and in the presence of the defendant Shuttlesworth, in the presence and hearing of the defendant Shuttlesworth, and in the presence and hearing of his counsel on that occasion?
A. Yes sir, he did.
Q. Did he make any statements with reference to someone picking him up or riding him in their automobile from one place to another place on that occasion?

Mr. Hall: If Your Honor please, we object to the question and any answer to the question, anything which occurred in the trial below was taken down by a proper Court Reporter, we assume, and if counsel is referring to happenings there and wants to put sections in here, then he should bring such Reporter here and establish the fact that he did take it down. Detective Pierce has not been

qualified as a Reporter. His interest is adverse to that of this defendant. He is an employee of the City of Birmingham and one of the prosecutors of this action. I assume Detective Pierce initiated the first affidavit and complaint in this cause. He is an Investigating Officer.

If Counsel wants to establish what happened in the Court below, his avenues is open to him. He is an Officer of the City of Birmingham and he has a transcript and the Court Reporter is available to him. We object to Detective Pierce, any answer he gives would be purely hearsay, irrelevant and immaterial and incompetent.

Mr. Davis: Does You Honor care to hear from the City on this point? Number one, of course, these recordings of these proceedings were recorded by recording machine rather than by shorthand in the Recorder's Court. We are talking about simply here about the hearsay proposition, and the proposition comes up as to whether this is an exception to the hearsay rule. We submit it was an exception. It was made in the presence of the defendant and [fol. 19] under oath and the right of cross examination was present and Counsel were present and every item of the defensive elements to except this testimony from the hearsay rule occurs, and we submit that it is admissible. Of course, it is hearsay, but it falls definitely within the exception to the rule prohibiting hearsay testimony.

Mr. Shores: Your Honor, the best evidence would come from these witnesses they attempted to place on the stand, the witnesses who testified there was a chance of incriminating himself, and they are attempting to do indirectly what they can't do directly. This could be used only for impeachment purposes and the exception to the hearsay rule could not apply in this instance.

Mr. Davis: This rule would apply where the testimony of the witness was available. They have seen fit to avail themselves of an immunity or cloak to keep the witnesses themselves who made the statements from testifying, and in that situation I submit this testimony would be an exception to that evidence in the hearsay rule.

Mr. Hall: The only possibility of evading the hearsay rule would be for impeachment purposes. There is no testimony before this Court upon this witness is called upon to

impeach. He can't testify directly within that exception. If Counsel wants to establish what occurred in the Court below, he knows how to do it. He can't evade the long established rule of evidence. The Court Reporter himself probably could do it, but certainly he couldn't do it with a biased Police Officer or any other witness who may have been sitting in the Court Room down there. It would not come within the exception to the hearsay rule.

Mr. Davis: I might add that this question of bias and of Mr. Pierce's interest in this matter would be—

The Court: No, I don't think that would have any weight.

Mr. Davis: The hearsay rule applies where a written document is evidence of the transaction between the parties, but statements under oath where the defendant was present would clearly come within the exception of the hearsay rule.

Mr. Hall: These witnesses cannot testify because of incrimination, it cannot be done by indirection of what they testified to. Another man can't come in and testify [fol. 20] as to what they may have said. This is purely hearsay and not within the exception to hearsay rule. If the City has a case against this defendant, they should establish it by clear proof, clear proof and clear testimony, and direct testimony, not by indirection, not by an escape mechanism from the hearsay rule. This is a violation to allow this witness to testify and there is no exception which would cover it.

The Court: I will sustain the objection to the question whether officer Pierce heard James Gober make a statement.

Mr. Davis: If I might prolong this thing one moment further and make this remark, with the Court's indulgence. The reason for the hearsay rule of evidence, number one, the person does not have the right to cross examine. Number two, the person making the statement was not under oath. And those two elements are certainly present here. The witness was under oath when he made the statement. He was in the presence of this defendant when he made the statement. This defendant had the right to cross examine him when he made the statement. Every element that makes

the hearsay rule objectionable has been eliminated by the factors that existed at the time these boys made this statement, and I submit every element that makes hearsay objectionable has been met and we would like to reserve an exception if that is still the Court's ruling.

The Court: Isn't there one other thing, that the person whose interest was adversely affected by the statement affirmed or denied or remained silent? Is that one of them?

Mr. Davis: He had the opportunity to be heard. He may not have remained silent, that hasn't been put forth.

The Court: Will there be evidence about whether the defendant upon the statement of Gober being made remained silent or denied it?

Mr. Davis: There will be some statements.

The Court: All right. You may ask him.

Mr. Hall: We are going to take exception to that ruling [fol. 21] allowing this testimony in upon the grounds it is a violation of this defendant's rights under the Laws of the Constitution of our State and under the 14th Amendment of the Constitution of the United States.

Q. Mr. Pierce, I will ask you if James Gober on the occasion we just talked about in the presence and hearing of this defendant and under oath made the remark of—I will ask you did he make any remark as to where he went on the evening of March 30, 1960?

Mr. Hall: If Your Honor please, we object to the method of questioning this witness on direct examination. It is leading. He is putting words in the witness' mouth. He is making this case. If he wants the witness to testify, he should phrase his questions differently.

The Court: May I inquire whether the witness heard James Gober in the presence of defendant Shuttlesworth say anything about where he had been the afternoon before or two days before, whether it was the 30th or 31st or the 1st of April?

Mr. Hall: We would object to that question and the answer thereto on the grounds that an answer is irrelevant and immaterial and on further grounds the witness is incompetent to testify.

The Court: The Court thinks it would be well to let him answer that.

Mr. Hall: We want an exception to His Honor's ruling.

Mr. Davis: You may answer.

A. What was the question?

The Court: Read it, please, Mr. Reporter.

(Question read)

A. I heard him testify that he was a student at Daniel Payne College.

Mr. Hall: If Your Honor please, we object. That is not a responsive answer as to whether he heard anything about where he had gone the day before.

The Court: I would leave that out.

Mr. Hall: We object to any voluntary statement not responsive to the question and we reserve an exception.

A. In response to questions by City Attorney Breckenridge, he stated—

Mr. Billingsley: We interpose an objection.

[fol. 22] The Court: No, I mean at the same time and place and in the presence of the defendant.

Mr. Billingsley: This is what we have in this situation. We have the City Attorney using the Court Reporter's record from which he is questioning Mr. Pierce. Whether or not Mr. Pierce was present all during the trial I do not know, but it has to do with the trial which took place down in the City Hall, and this is a trial de novo. Now, except for impeachment purposes, the record should not be used in the trial of this case. Now, the City has—we seek direct testimony as to this whole charge of aiding and abetting which relates to the ordinance which we have here. It seems to me if it could be done, the best person to use, as far as the transcript of evidence is concerned, would be the Court Reporter. The Court Reporter as such, I don't believe, would give this testimony, but we are not using the testimony. We are using Mr. Pierce to testify what is in that record there, and I question whether or not that record is accurate because it was taken off a machine and

it has not been established that this witness is competent in order to find this defendant guilty of the ordinance he is charged with violating. Then we come in with James Gober. James Gober is not before this Court. We are trying Rev. Shuttlesworth. Does this come in the form of a confession or how does it come? An admission against interest or whatever it is? If it is a confession, then Rev. Shuttlesworth did not make it. If it is an admission against interest, Rev. Shuttlesworth did not make it. But I fail to understand how a transcript of evidence in the Recorder's Court can be used with Mr. Pierce acting as the witness to make a case for the City. The best way I could see to do it would be to have the Court Reporter to testify as to what is in that transcript. I just fail to see how he can establish that.

The Court: The question was not based upon the transcript. The question was based upon the fact vel non of the presence of this witness at that time and place hearing a statement or statements in the presence of the defendant on trial today. That is the basis on which the question is [fol. 23] propounded.

Mr. Hall: If Your Honor please, before he answers that, assuming that he is going to testify with reference to some confession or some admission against interest by a man whom Your Honor has decided would not have to testify against himself, now, if this witness is going to establish testimony which the man cannot be made to give, then certainly he is in a peculiar light. And if it is a confession or admission against interest, before we testify we should be allowed to inquire into his knowledge whether or not he has familiarized himself with this transcript, if he read it or if he has an independent recollection.

The Court: Could we predemit the transcript and get it out of our minds?

Mr. Hall: No sir. It is right in our face in front of the City Attorney. He was looking at it and reading from it.

The Court: Well, the Court isn't.

Mr. Hall: But we know that question that the City Attorney direct to the witness which Your Honor did not allow came from the transcript and was based on the transcript. So, if the City Attorney would dispose of the record

and get it out of our view then perhaps we could forget it, but since he is looking at it and consulting it and since Mr. Pierce was sitting at the table by him I suppose he has looked at it. I would like to question him as to whether he read the record and decided that is what happened, since they have had it and we haven't had it.

The Court: You desire to make some inquiries on voir dire?

Mr. Hall: Would Your Honor rule that I could?

The Court: Yes.

Mr. Hall: Mr. Pierce, have you seen the transcript of the record in this case?

A. I have.

Mr. Hall: Have you read it?

A. I read it this morning.

Q. This morning was the first time you read it?

A. I think it was.

Q. You don't recall having read it before?

[fol. 24] A. No, I don't.

Mr. Hall: Have you gone over this case with Mr. Davis, the attorney for the City?

A. No.

Q. Have you all discussed this matter?

A. Not in detail, no sir.

Q. You haven't told him anything about what James Gober said or testified to?

A. No, I haven't.

Q. He doesn't know what you are going to say?

A. I read the transcript. He asked me if I wanted to read the transcript and I read the transcript.

Mr. Hall: You read the transcript this morning?

A. That's right.

Mr. Hall: And you did sit in with the City Attorney at the counsel table this morning, did you not?

A. I was at the table, yes.

Mr. Hall: We agreed to let you sit in and you did sit in with Mr. Davis and you have been consulting with him?

A. I don't know about any agreement. I did sit here.

Mr. Hall: Well, we did stipulate you could sit in and you did sit in at counsel table?

A. That's right.

Mr. Hall: Your Honor, we object to any answer this witness may make as not being of his own information, but having come from the record and having come from the City Attorney.

Mr. Davis: That hasn't been established yet, that it came from this record. I think cross examination would be the proper place to establish that, if that be the case.

The Court: Let him answer.

Mr. Hall: If Your Honor please, we except.

Mr. Davis: Can we go back to the question, Mr. Reporter, and read it to the witness, please.

(Whereupon the last question propounded by Mr. Davis was read.)

[fol. 25] A. He did.

Mr. Hall: If Your Honor please, he is answering Your Honor's question rather than Mr. Davis' question.

The Witness: Could I ask Your Honor, does Your Honor want me to testify as to what happened in Recorder's Court or in so far as I know, my recollection, or does Your Honor want me to answer questions one at a time? I am a little confused.

The Court: It might keep it more direct and clear if you took one question at a time.

A. All right.

Q. I believe you said, yes, he did say where he went or that he had been someplace on March 30th. Is that your answer in substance?

A. Yes.

Q. Did he say where that place was on March 30th he went?

A. He said he went to Rev. Shuttlesworth's house.

Q. Did he make any remarks as to who was present when he arrived at Rev. Shuttlesworth's house?

A. He said there were several people present. He named Rev. Shuttlesworth and the Rev. Billups. Said they were there.

Q. Did he mention that either Rev. Shuttlesworth or Rev. Billups made any statement there on that occasion?

Mr. Hall: If Your Honor please, we object. Gober himself might be incompetent to answer that question, and this witness certainly is incompetent. This is pure hearsay and it does not come within an exception to the hearsay rule as to whether this defendant made a statement in that meeting as to what a witness said at a hearing some other time as to what he said cannot bind this defendant here.

The Court: Overrule

Mr. Hall: We except.

A. He testified that the sit-down demonstrations was discussed at the meeting.

Q. Did he state whether or not Rev. Shuttlesworth participated in that discussion of the sit down demonstration?

A. He testified the meeting was in the living room of Rev. Shuttlesworth's house and that Rev. Shuttlesworth [fol. 26] participated in the discussion about the sit down demonstrations.

Mr. Hall: If Your Honor please, we would like to call the Court's attention to the City Attorney consulting with the transcript of the record on the trial below in the City Court. We would like for this record to show that in the process of asking this witness questions.

The Court: All right.

Mr. Davis: I believe there was an objection. Did the Court rule on it? You just wanted the record to show something?

Mr. Hall: The Court agreed it would be shown.

Q. Did he make any remark or statement that anyone sought volunteers or participants in this demonstration?

Mr. Shores: Your Honor, that is purely leading there.

Mr. Davis: I asked if anyone—he if made a remark that anyone.

Mr. Hall: If Your Honor please, we object. He is bringing in anyone. Anyone isn't on trial here and certainly what this witness said couldn't bind anyone not before this Court and not in the presence of this Court. The way the question was phrased is leading and putting words in the witness' mouth.

The Court: Could I hear that question?

Mr. Davis: I don't mind rephrasing the question if the Court would like.

Q. Did the witness say that Shuttlesworth sought volunteers for this demonstration, this sit in demonstration?

Mr. Hall: We object on the grounds the question is improper and the answer would be incompetent.

The Court: Overrule.

Mr. Hall: We except.

A. He testified that Rev. Shuttlesworth asked for volunteers to participate in the sit down demonstrations.

Q. Did I understand you correct, Mr. Pierce, to say that he stated Rev. Billups was there at this meeting also?

Mr. Hall: If Your Honor please, we object to this leading.

[fol. 27] Mr. Davis: I asked him if I understood him to say that?

A. He stated that Rev. Billups was there in the meeting.

Q. Did he make any reference to any list being made at this meeting held at Rev. Shuttlesworth's house?

A. He did.

Mr. Hall: If Your Honor please, Counsel is still leading. He is asking the witness whether any reference was made to a list being made.

The Court: Would it make it legal to say whether or not any discussion had about a list being made? Doesn't whether or not save it from being leading?

Mr. Hall: I don't think so, Your Honor. I think any reference by Counsel to a list being made is suggestive to

this witness and, frankly, I think any reference at all would be improper. I object strenuously to prefacing the question by mentioning of a list by Counsel.

The Court: Please let him answer.

Mr. Hall: We except.

A. He testified that there was a list made but he didn't know who made the list.

Q. I will ask you if he made any response to a question asked by Counsel for the City of Birmingham on that occasion with regard to whether or not anyone was to furnish representation for them in Court growing out of this demonstration.

Mr. Shores: Your Honor, we object to that question because it doesn't say who. We want the record to show if he is still testifying as to what Gober said, we want the record to show he is still testifying to that hearsay testimony, and if he is referring to Rev. Shuttlesworth, we would like the record to show that, and we would like him to rephrase that question.

The Court: Did you understand the question?

The Witness: Yes sir.

The Court: Please answer it.

Mr. Shores: We except.

[fol. 28] A. I don't remember Gober testifying as to anything with regard to any defense.

Q. I will ask you, Mr. Pierce, if on this same evening of April 1, 1960 in the presence and hearing of Rev. Shuttlesworth and Rev. Billups if James Albert Davis, while under oath, made any statements concerning this meeting held at Rev. Shuttlesworth's house?

Mr. Hall: If Your Honor please, we object to any testimony this witness may give with reference to any testimony that James Albert Davis might have given on the trial in the City Court on the same grounds that we objected to his testimony in reference to Gober, on the grounds that it is pure hearsay and inadmissible. On the further ground that this witness is incompetent to testify as to anything that might have occurred in the City Court. This is certainly

not the best evidence. And on the further grounds that it is irrelevant and immaterial.

The Court: Please let him answer.

Mr. Hall: Take exception, Your Honor.

A. What was the question, now?

The Court: Read it, Mr. Reporter.

(Question read)

A. He did.

Q. Will you tell the Court what, if anything, he said on this occasion that took place at the house of Rev. Shuttlesworth at this hearing or discussion wherein both Rev. Shuttlesworth and Rev. Billups were present.

Mr. Hall: If Your Honor please, we object to the question as being improper. We object to any answer as being incompetent, inadmissible under the hearsay rule.

The Court: Overrule.

Mr. Billingsley: Take exception.

A. He testified that Rev. Billups came to his school, Daniel Payne College, in a car and carried him to Rev. Shuttlesworth's house. He further testified that when he arrived there there were several people there, among which [fol. 29] was Rev. Shuttlesworth and Rev. Shuttlesworth's wife and a number of other students from Daniel Payne College. He testified that in response to Rev. Shuttlesworth asking for volunteers to participate in the sit down strikes that he volunteered to go to Pizitz at 10:30 and take part in the sit down demonstrations. He further testified that a list was made but he didn't know who made the list. He thought the list was compiled by—

Mr. Billingsley: I object. I doubt if the answer he is giving is responsive to the question. He is just making statements as to what was allegedly said.

The Court: Please leave it in.

Mr. Billingsley: We except.

A. He said he didn't know or wasn't sure who made the list and he testified that Rev. Shuttlesworth didn't say that he would furnish Counsel but told him or made the an-

nouncement at that time that he would get them out of jail.

Mr. Hall: If Your Honor please, we would like to ask the witness at this time before making an objection whether or not he is quoting the witness verbatim or if this is his interpretation of the alleged answer?

A. I am attempting to quote him verbatim.

Mr. Hall: You are attempting to quote him verbatim?

A. Yes.

Mr. Hall: This is not your interpretation?

A. That's right.

Mr. Hall: At what time was the trial in City Court?

A. It was at night. It was later than 7:30.

Mr. Hall: What date was it?

A. My best recollection is April 1st.

Mr. Hall: So, you are quoting him verbatim since last April 1st?

A. I am attempting to to the best of my recollection.

Mr. Hall: Your Honor, we object to this testimony and move it be excluded on the grounds it is incompetent and a violation of the hearsay rule. On the further grounds it is a violation of this defendant's rights: If this testimony is allowed to stand it is a violation of this defendant's rights to a fair trial, equal protection under the law as guaranteed [fol. 30] him by our own State Laws and our State Constitution and by the 14th Amendment to the Constitution of the United States.

The Court: Overrule.

Mr. Hall: We want an exception.

Q. Mr. Pierce, are you familiar with where Rev. Shuttlesworth's residence is situated?

A. Yes sir, I know where his residence is.

Q. Is that in the City of Birmingham?

A. Yes sir.

Q. Do you know it to be a fact that a number of boys—or I will put it this way. Do you know it to be a fact that James Gober and James Albert Davis did participate in sit down or sit-in demonstrations on the day of March 31, 1960?

A. Yes sir, they did.

Q. Do you know of your own knowledge that other colored boys on that same date participated in sit-in demonstrations in down town stores in the City of Birmingham?

Mr. Billingsley: I object to that, as to other colored boys as to participation in sit-ins. He brought in James Gober and James Albert Davis and now he is bringing in other persons.

Q. Let me put it this way. Other boys who attended the meeting at Rev. Shuttlesworth's house?

Mr. Billinsgley: We object. It is not shown Detective Pierce knows other boys attended this meeting at Rev. Shuttlesworth's house.

The Court: Let him answer.

Mr. Billingsley: We except.

A. Yes.

Q. Have you been told by other persons who participated in the sit-in demonstrations that they did attend this discussion at Rev. Shuttlesworth's house on March 30, 1960?

Mr. Billingsley: We object to that.

The Court: Unless they said it in the defendant's presence [fol. 31] I think probably it ought to be left out.

Mr. Davis: We withdraw the question.

Q. Did either Gober or Davis while at that Court hearing and under the conditions we have previously outlined state that other persons were present—I am speaking of in the Court room now—did they state that other persons were present who did participate in these demonstrations at Rev. Shuttlesworth's house on March 30, 1960?

A. Yes sir.

Q. Mr. Pierce, on the occasion of the trial in Recorder's Court in City Hall on April 1, 1960 did Rev. Shuttlesworth

or Rev. Billups either deny any of these statements made by the witnesses that we have been discussing, Gober and James Albert Davis?

Mr. Billingsley: We object to that. Not shown they made any statements in that particular trial.

The Court: Overrule.

Mr. Billingsley: We take exception.

A. I don't remember either of them taking the stand.

Q. Were you there during the whole proceedings?

A. Yes.

Q. And in your presence did he take the stand?

A. I don't remember if he did. My recollection is that neither of them did.

Q. Did not take the stand—that is your best judgment?

A. I am pretty sure of that.

Mr. Davis: That is all.

Mr. Shores: No questions.

(Witness excused)

Mr. Davis: That is the City's case, Your Honor.

Mr. Adams: Judge, we would like to move that the evidence be excluded in the case of City of Birmingham against Rev. F. L. Shuttlesworth for aiding and abetting in violation of the general City Code, Section 1436, and the complaint filed against him in this case, first, on the grounds that there has been no sufficient evidence in this case to establish that there was a violation on the part of [fol. 32] the defendant in this case. The sum total of the testimony was a discussion which was clearly hearsay and inadmissible. The persons who said they had discussions with him have been tried, and, first of all, they haven't been convicted and there is a serious question in the Law as to whether a man can be tried as an aider and abetter of another defendant without the conviction of the other defendant, which has not been done yet. In this case the Judge has not rendered his decision in the case.

Furthermore, there is no evidence here at all in this particular case that these defendants, that the people he was supposed to be aiding and abetting, ever did go in any particular stores or what the circumstances of what hap-

pened in the stores. None of that has been brought out in evidence here, and to whether they were told to leave or not told to leave. Maybe those things were brought out in other cases, but in order to make out a case against Rev. Shuttlesworth that would have to be brought out in this case. Each case stands on its own merits. Neither of this was brought out in either of the cases, Rev. Shuttlesworth or Rev. Billups.

I think it is essential in making out a case of aiding and abetting that you have to show that a statute was violated, and I don't think anybody can deny that all that was brought out here was that two of the people who were defendants, who have not been convicted, were in the house of F. L. Shuttlesworth and discussed sit-ins. That isn't aiding and abetting, to discuss the matter. It is certainly a man's right to discuss a thing in this Country.

First of all, we contend that even if there were some demonstration, which we say there were not, that the persons who did it had a right to do so under the Constitution of the United States, 14th Amendment. But we don't even get to that question here because we haven't made a determination that the thing had been done. We don't have a showing that there was a conviction. We don't show what places the so-called people he aided and abetted went [fol. 33] to—Kresses or Loveman's or Newberry's or anything—nothing is in the record to show that. I am not saying that it happened.

I think that the statute which is charged with aiding and abetting of the violation thereof is unconstitutional in that it requires any person who warns a person to stay off the premises, it does not specify whether the owner or the person in charge of the premises, would be the proper person to make the warning. If anybody came up and if somebody didn't move after someone told them to leave, they would be guilty of violating the Trespass After Warning Statute, which means the statute is unconstitutional, and if the statute is unconstitutional, certainly no one could be guilty of aiding and abetting and unconstitutional statute.

In this particular case we don't even have the issue coming before the Court as to whether these people were

in a publicly owned place and whether they were peaceably demonstrating, which we have a right to do. We don't have that at all, because there is no testimony to that effect.

We submit the testimony that was given is incompetent because it was hearsay testimony. And on the grounds that there is no showing in this case against Rev. Shuttlesworth that these people were boisterous or violent or did anything which was in violation of law, and how could he be guilty of aiding and abetting violation of the law?

I submit the City has failed to make out a case flagrantly in the case of Rev. Shuttlesworth and Rev. Billups.

I will also file, in addition to that, Judge, a written motion to that effect with the Court's permission.

The Court: Yes. I overrule.

Mr. Hall: If Your Honor please, we want an exception to Your Honor's ruling.

Mr. Hall: If Your Honor please, we rest.

The Court: All right. I think, to preserve the record perfectly, your last motion should include both defendants that are on trial together.

[fol. 34] Mr. Adams: Yes sir.

The Court: All right.

Mr. Davis: Judge, we have nothing further.

Judge, the City doesn't care to argue on the assumption and stipulation that Counsel for the Defense would not see fit to argue the case.

The Court: What say the defense?

Mr. Hall: If Your Honor please, could we have a short recess?

The Court: Please let's everybody come back at 11:20.

(Whereupon there was a short recess, and there being no further arguments by Counsel, the following occurred):

The Court: If Counsel will meet back with me at 3:30 P.M., I will give the judgments in these cases.

(Whereupon Court was recessed until 3:30 P.M., at which time the following occurred):

[fol. 35] The Court: May I ask if James Albert Davis is present?

A Voice: Yes.

The Court: James Gober. Roy Hutchinson. Robert J. King. Robert L. Parker, Jr. Robert D. Sanders. Jessie Walker.

A Voice: Here.

The Court: William West.

A Voice: Here.

The Court: Roosevelt Westmoreland and Willie J. Willis. Anyone whose name I didn't call among the students? Charles Billups.

A Voice: Here.

The Court: F. L. Shuttlesworth.

A Voice: Here.

SENTENCE

The Court: Taking the Charge of Trespass After Warning as applied to each of the names just called, there was a slight change in the previous sentence. The Court finds the defendant and each of those called, finds the defendant guilty as charged in the complaint and fixes the punishment and fine at $100.00 and 30 days hard labor for the City. I have indicated that appeal bond will probably be filed.

Mr. Shores: Yes sir. But, Your Honor, before these appeal bonds are filed we would like for you to suspend the sentence to give us a chance to file a motion for a new trial and continue them under the same bond.

The Court: What do you say to that, Mr. Walker?

Mr. Walker: I have no objection to it. In other words, he has a right to file a motion for new trial. I have no objection to it. In other words, if they want to be free on the same bond and if that is agreeable to the Court, it is agreeable with me.

The Court: Mr. Davis, a motion was just made in each of the Trespass After Warning cases that—of you will, restate the motion, please.

Mr. Shores: That the sentence in each case be suspended and the defendants be continued under the same bond until we file and have a motion for a new trial determined.

Mr. Davis: Judge, I think we prefer things to go in their normal course.

[fol. 36] The Court: If there is to be appeal bonds in each case, I do not see how any hardship or prejudice would result from letting it be done forthwith.

Mr. Shores: Well, Your Honor, we are in a position to file it forthwith, but, as Counsel knows, these are quasi-criminal cases and to file an appeal bond now this Court would really lose jurisdiction, and if His Honor doesn't see fit to suspend the sentence, we would beg permission to file a motion for a new trial and let the motion be entered as filed and Your Honor can enter his ruling and give us a chance to file the motions within the next day or two and we will perfect the appeals today.

The Court: Would you mind giving the Court the benefit of your thought about any advantage or any favorable result or any profit to the defendants by doing that?

Mr. Shores: In a motion for a new trial we feel we could re-raise several points that were not really raised during the trial and indicate them as error in this motion for a new trial. In other words, if Your Honor would entertain them, we would make a motion for a new trial at this time and beg leave of the Court for time to specify the grounds for a new trial and let the record show that the motion for a new trial was filed immediately after the sentence and that the bond would be filed after—let it be shown the bond is filed after the motion for a new trial is ruled upon.

Mr. Adams: Judge, I think one of the thoughts in mind here is it is almost axiomatic for lawyers that a motion for a new trial should be filed after the sentence of the defendant, and it might be considered negligence if such a motion were not filed regardless of what the Court's decision may be on it. And we also are in this position in these cases. It is my understanding that the motion for new trial does not necessarily suspend the running of time in which the record must be on file with the Court of Appeals and, therefore, in order to save the time in which we have to perfect the appeal and not let the time just [fol. 37] passing when the motion is before Your Honor consume the time we have to file our record on appeal, we are asking that the motion be allowed to be filed before we file the notice of appeal, and if the Court rules against us on the motion we will file immediately our appeal.

Now, in the event that the Court sees fit to want to dispose of the thing immediately, we would like to file now a motion orally after sentencing, which has been done, sentence has been given, we would file our motion orally and subsequently put it in writing, and the Judge may rule, if he is so disposed, now, as to how he feels about it. But we think, as officers of the Court and lawyers, that a motion for a new trial certainly is consistent with good practice and may be considered error on the part of Counsel if such were not filed. That is our thought about it.

The Court: All right. You want the execution of sentence held in abeyance until such time as your motion for new trials can be formally presented?

Mr. Shores: That is our motion, Your Honor.

The Court: Would there be anything—would there be any advantage to the defendants to put that motion in writing formally?

Mr. Shores: We would have to designate, and it would take some time to spell out the various grounds that we feel on which we are entitled to a new hearing or a new trial. We could have it done by Monday.

The Court: I won't be here Monday.

Mr. Shores: Well, the following Monday or any date Your Honor sees fit. As I say, it is not going to jeopardize the City to grant this little stay.

The Court: If there is any good or any advantage to be had, the Court wants it had. I just didn't see how there was to be any. Now, suppose we do it this way, then. As I understand the law, I can suspend the judgment of sentence for 24 hours, and I am doubtful about being able to do it longer in City appeal cases. Would this time tomorrow be too soon?

It seems to me that you have here the ten students and the Court thinks they were misused and misled into a viola-
[fol. 38] tion of a City Ordinance and has so ruled. Now, if there would be any stronger position before the Court of Appeals to have also a denied motion for a new trial, I would want them to have that.

Mr. Shores: We feel they would, Your Honor. Could Your Honor do this? As indicated, we have made our motion for a new trial and would Your Honor give us leave—

I mean you can rule on the motion and deny the motion now and give us leave to put it in writing for the record?

The Court: Sure.

Mr. Shores: Then we would immediately make our appeal bonds and the sequence of the record would show a motion for a new trial, the motion overruled, and the appeal perfected.

The Court: What says the City?

Mr. Davis: I am not sure I see what he is trying to accomplish other than the fact he would like to clutter this record further, but I would prefer not to yield on any point on this thing. Of course, they are entitled to file their motion. I have no objection to giving them several days to file their motion, but other than that, I wouldn't want to be agreeable to any extensions or waivers as to bonds or things of that description.

Mr. Shores: We will file the bond today. We are asking we be permitted to spell out the oral motion we have already made.

The Court: After your appeal bond is filed?

Mr. Shores: That's right.

The Court: I think that is all right.

Well, it was the same judgment and sentence in each of the student cases.

That brings us, I believe, to three other cases, the case of Charles Billups charged with aiding and abetting. The Court finds the defendant guilty as charged in the complaint and fixes his punishment and fine in the sum of $25.00 and 30 days hard labor for the City of Birmingham.

In the case of F. L. Shuttlesworth, charged with aiding and abetting, the Court finds the defendant guilty as [fol. 39] charged in the complaint and fixes his punishment at a fine in the sum of $100.00 and 180 days hard labor for the City.

The case of F. L. Shuttlesworth, charged with false information, the defendant moved for a dismissal and the motion was granted.

Mr. Shores: Your Honor, as to those last two cases we would like to move orally for a motion for a new trial with leave to file written motion within a reasonable time.

The Court: With the appeal bonds forthwith made?

Mr. Shores: That's right.

The Court: All right.

Mr. Shores: How long will Your Honor give us to write those motions up since the bonds will have already been filed? May we have a couple weeks?

The Court: Well, haven't we conscientiously canvassed the issues?

Mr. Shores: We have.

The Court: Is there anything to be gained by thrashing the straw again?

Mr. Shores: We would just like to have it ruled on. Let the record show that the motion is denied.

The Court: All right, so ordered.

Mr. Shores: Then, we will make note of an appeal in each case separately and severally and will forthwith file the appeal bond. What will that bond be, Your Honor?

The Court: $300.00 I believe is mentioned in each case.

The foregoing was all the testimony and oral proceedings.

[fol. 40] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 42]

IN THE COURT OF APPEALS OF ALABAMA

F. L. SHUTTLESWORTH, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the record of the proceedings had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's Motion to Strike, filed in this cause. (Tr. 2, 3, 7 & 14)

2. The Court erred in overruling Appellant's Demurrers filed in this cause. (Tr. 3, 4, 7 & 14)

3. The Court erred in overruling Appellant's Motion to Exclude the Evidence, filed in this cause. (Tr. 5, 6, 7 & 33)

4. The Court erred in overruling Appellant's Motion for a New Trial. (Tr. 9, 10, 11 & 39)

5. The Court erred in allowing Detective Charles L. Pierce, a Police Officer of the City of Birmingham, to testify as to his recollection of testimony given in the Recorder's Court of the City of Birmingham, by witnesses in the trial of this matter in aforesaid Recorder's Court. (Tr. 17-31)

Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, J. Richmond Pearson, Attorneys for Appellant.

[fol. 43] Certificate of Service (omitted in printing).

[fol. 44]

IN THE COURT OF APPEALS OF THE

STATE OF ALABAMA ..... JUDICIAL DEPARTMENT

OCTOBER TERM, 1960-61

6 Div. 802

F. L. SHUTTLESWORTH,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960

CERTIFICATE FILED
January 26, 1961

TRANSCRIPT FILED
April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is aiso considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 45]

IN THE COURT OF APPEALS OF THE

STATE OF ALABAMA ..... JUDICIAL DEPARTMENT

OCTOBER TERM, 1960-61

6 Div. 802

F. L. SHUTTLESWORTH,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

OPINION—May 30, 1961

CATES, Judge: Appellant was convicted in the Circuit Court of Jefferson County of violating §824 of the General City Code of Birmingham of 1944, which reads as follows:

> "It shall be unlawful for any person to incite, or aid or abet in, the violation of any law or ordinance of the city, or any provision of state law, the violation of which is a misdemeanor."

[fol. 46] The particular corollary crime of which he was accused of inciting others to commit is found in §1436 of the City Code. This section makes it an offense to remain on the premises of another after a warning. See *James Gober*

v. *City of Birmingham*, 6 Div. 797 (Ms.), —— Ala. App. ——, this day decided.

We can only consider one point raised by the assignments of error and the propositions of law and argument, i. e., the sufficiency of the evidence to show a violation of §824, supra.

The statement of the case set forth in appellant's brief (which we are entitled to rely upon without regard to the record itself in civil cases) is that "Shuttlesworth asked for volunteers, and that there were some volunteers to take part in, 'sit-down' demonstrations"; Shuttlesworth promised to get them out of jail.

The appellant's argument on this point deliberately evades the effect of the word "incite" in the city ordinance, and deals solely with the joint responsibility of an aider and abetter. It is sufficient to answer this argument by a quotation from Jowitt's *Dictionary of English Law*, p. 953:

> "Everyone who incites any person to commit a crime is guilty of a common law misdemeanour, even though the crime is not committed. If the crime is actually committed, he is an accessory before the fact in the case of felony, and equally guilty, in the case of treason or misdemeanour, with the person who commits the crime."

A sit-down demonstration being a form of trespass after warning, denotes a violation of both State law and especially of §1436 of the City Code, supra.

There is no question of the restriction of any right of free speech or other assimilated right derived from the [fol. 47] Fourteenth Amendment, since the appellant counseled the college students not merely to ask service in a restaurant, but urged, convinced and arranged for them to remain on the premises presumably for an indefinite period of time. There is a great deal of analogy to the sit-down strikes in the automobile industry referred to in *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240.

As presented by the appellant's assignments of error and brief, the judgment below is due to be

Affirmed.

[fol. 48]

IN THE COURT OF APPEALS OF THE

STATE OF ALABAMA ..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 802

F. L. SHUTTLESWORTH,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

APPLICATION FOR REHEARING—June 14, 1961

Now comes appellant, in the above styled cause, and respectfully moves this Honorable Court to grant appellant a rehearing in said cause, and to reverse, revise and hold for naught its Judgment rendered on to-wit, the 30th day of May, 1961, and affirming the Judgment of the Circuit Court of Jefferson County, Alabama, and to enter an Order, reversing said Judgment.

Arthur D. Shores, Orzeli Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

ORDER OVERRULING—June 20, 1961

It is ordered that the application for rehearing be and the same is hereby overruled.

Cates, Judge.

[fol. 49]

IN THE COURT OF APPEALS OF THE
STATE OF ALABAMA

OPINION ON REHEARING—June 20, 1961

CATES, Judge: The application for rehearing in this case is supported by a brief which contains two propositions of law, both of which are predicated on the appellant's having been convicted under §1436 of the General City Code of Birmingham.

This appellant was convicted of inciting others to violate §1436. The propositions accordingly have no bearing on the facts.

Application Overruled.

[fol. 49a] [File endorsement omitted]

[redacted] 6 Div. 764

IN THE SUPREME COURT OF ALABAMA

No. 764 Sixth Division

Ex Parte F. L. Shuttlesworth

F. L. SHUTTLESWORTH, Appellant,

CITY OF BIRMINGHAM, Appellee.

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., J. Richmond Pearson, Oscar W. Adams, Jr., Attorney for Appellant.

PROCEEDINGS ON PETITION FOR CERTIORARI

July 5, 1961 Submitted on Briefs

September 25, 1961 Writ Denied: No Opinion

October 4, 1961 Application for Rehearing Filed

November 16, 1961 Application for Rehearing Overruled.

[fol. 49b]

No. 764 Sixth Division

Ex Parte: F. L. Shuttlesworth

IN THE SUPREME COURT OF ALABAMA

F. L. SHUTTLESWORTH, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed July 5, 1961

[fol. 50]

To the Honorable Chief Justice and Associate Justice of the Supreme Court of Alabama

1. Comes the Appellant, by and through his Attorneys, Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., and J. Richmond Pearson, and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain judgment of the Court of Appeals, on to-wit: May 30, 1961, wherein F. L. Shuttlesworth was Appellant and the City of Birmingham was Appellee, which Judgment affirms the Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a Rehearing of said cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 20th day of June, 1961.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner as follows:

> "Comes the City of Birmingham, Alabama, a municipal corporation, and complains that F. L. Shuttles-

worth, within twelve months before the beginning of this prosecution, and within the City of Birmingham or the police jurisdiction thereof, did incite or aid or abet in the violation of an ordinance of the City, to-wit, Section 1436 of the General City Code of Birmingham [fol. 51] of 1944, in that F. L. Shuttlesworth did incite or aid or abet another person to go or remain on the premises of another after being warned not to do so, contrary to and in violation of Section 824 of the General City Code of Birmingham of 1944."

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinances which formed the basis of the prosecution, as applied to appellant, constituted an abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinances were unconstitutional on their face.

5. The Court overruled the Motion to Quash and the Demurrers whereupon petitioner was tried without a jury, and was found guilty as charged, and fined One Hundred ($100.00) Dollars and costs, and sentenced to a term of Ninety (90) days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the City's case, which Motion was denied. After judgment and sentences, petitioner filed a Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Your petitioner further shows unto Your Honors that the Court of Appeals erred in affirming and failing to reverse said cause, in the following ways, to-wit: The Court based its judgment in this cause upon the opinion judgment rendered in the case of *James Albert Davis vs. City of Birmingham*, Sixth Division—797, decided May 30, 1961.

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinances and Complaint, the basis of the prosecution, are unconstitutional on their face, that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

b. That the Ordinance and Complaint, the basis of the prosecution, as applied to petitioner, constitute an abridgement of the privileges and immunities, and a denial of the equal protection of the laws, all in violation of the Fourteenth Amendment to the United States Constitution.
[fol. 52] The Court of Appeals erred in failing to rule that the conviction of petitioner was a violation of due process of law, an abridgement of the privileges and immunities of the petitioner, in that the petitioner was denied equal protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, Your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete transcript of record, and all proceedings of said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Honorable Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmance of said cause, during the pendency of this petition.

And petitioner prays for such other, further and additional relief in the premises as to this Court may seem

appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfully submitted,

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, By Orzell Billingsley, Jr., Attorneys for Appellant.

[fol. 53] *Duly sworn to by Orzell Billingsley, Jr., jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 54]

IN THE SUPREME COURT OF ALABAMA

No. 764 — Sixth Division

Ex Parte: F. L. Shuttlesworth

F. L. SHUTTLESWORTH, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

APPLICATION FOR REHEARING—Filed October 4, 1961

Now comes Appellant, in the above styled cause, and respectfully moves this Honorable Court to grant Appellant a Rehearing in said cause, and reverse, revise and hold for naught its Judgment rendered on to-wit, the 21st day of September, 1961, denying appellant the Writ of Certiorari and dismissing the petition, and to enter an Order reinstating appellant's petition, and directing that a Writ of Certiorari be issued out of and under the Seal of this Court, to the Court of Appeals of Alabama, to the end that this cause may be reviewed and determined by this Honorable Court.

Appellant further moves the Court to grant a Stay of Execution in this cause, during the pendency of this Application for a Rehearing.

Submitted herewith is a Brief and Argument, in support of said Motion.

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, J. Richmond Pearson, Attorneys for Appellant.

/s/ Orzell Billingsley, Jr.

[fol. 55]

In the Supreme Court of Alabama

The Court met pursuant to adjournment

Present: All the Justices
(Lawson's Division Sitting)

6th Div. 764

Ex Parte: F. L. Shuttlesworth, Petitioner

Petition for Writ of Certiorari to the Court of Appeals

(Re: F. L. Shuttlesworth v. City of Birmingham)

Jefferson Circuit Court

Order Overruling—November 16, 1961

It is hereby ordered that the application for rehearing filed on October 4, 1961, be and the same is hereby overruled.

Livingston, C. J., Lawson, Stakely and Merrill, JJ., concur.

[fol. 56] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 1]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA, IN AND FOR JEFFERSON COUNTY

No. 20778

THE CITY OF BIRMINGHAM,

vs.

CHARLES BILLUPS.

To-Wit:

APPEAL BOND—Filed May 4, 1960

The State of Alabama)
) City of Birmingham
Jefferson County.)

We, Charles Billups, principal and Jas Esdale sureties, acknowledge ourselves indebted to the City of Birmingham, a municipal corporation, in the sum of Three Hundred—no/100 Dollars, for the payment of which, well and truly to be made, we bind ourselves, our administrators, and executors. But the condition of the above obligation is such, that whereas the above bounden principal was tried and convicted on the charge of

Count 1. Aiding and Abetting Sec 824 GCC

Count 2. .....

Count 3. .....

and has prayed and obtained an appeal to the Circuit Court of Jefferson County, Alabama, from the judgment of the Recorder's Court of the City of Birmingham, adjudging him to pay a fine of One Hundred and no/100 Dollars, Costs Five Dollars; and to perform hard labor for 180 days, rendered the 4 day of April 1960.

Now, if the said principal shall appear at present Term of the Circuit Court of Jefferson County, Alabama, and from term to term thereafter until discharged by law, then this obligation to be void, otherwise to remain in

full force and effect. And as against this obligation we waive all right under the laws of Alabama to claim any personal property as exempt from levy and sale.

Witness our hand and seals this 4 day of April 1960.

Charles Billups (L.S.), 3516 N 64th Pl, Jas. Esdale (L.S.), 809 No 31 St., By Lacey Alexander (L.S.), Atty In fact.

Approved 4 day of April 1960.

William Conway, Recorder of the City of Birmingham.

[File endorsement omitted]

[fol. 2]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20778

CITY OF BIRMINGHAM, a Municipal corporation, Plaintiff,

v.

CHARLES BILLUPS, Defendant.

COMPLAINT—Filed October 11, 1960

Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Charles Billups, within twelve months before the beginning of this prosecution, and within the City of Birmingham or the police jurisdiction thereof, did incite or aid or abet in the violation of an ordinance of the City, to-wit, Section 1436 of the General City Code of Birmingham of 1944, in that Charles Billups did incite or aid or abet another person to go or remain on the premises of another after being warned not to do so, contrary to and in violation of Section 824 of the General City Code of Birmingham of 1944.

Watts E. Davis, Attorney for City of Birmingham.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20778

CITY OF BIRMINGHAM,

VS.

CHARLES BILLUPS, Defendant.

MOTION TO STRIKE—Filed October 11, 1960

Comes now Charles Billups, defendant in this cause, and moves to strike the complaint in this cause, and as grounds for said Motion, sets out and assigns the following, separately and severally:

1. That the complaint, affidavit, etc., is not sworn to in this cause.

2. That the allegations of the said complaint are so vague and indefinite, as not to apprise this defendant of what he is called upon to defend.

3. That the ordinances or statutes upon which are founded the complaint in this cause, as applied to this defendant, as a citizen of the State of Alabama, and of the United States, constitute an abridgment of the freedom [fol. 3] of assembly, speech and liberties secured to the Defendant, by the Constitution and laws of the State of Alabama and the Fourteenth Amendment of the Constitution of the United States of America.

4. That the said ordinances or statutes which are the basis for the affidavit, information or complaint in this cause, as applied to the defendant, constitute an abridgment of privileges and immunities guaranteed defendant, as a citizen of the United States, in violation of the Constitution and laws of the State of Alabama, and of the Fourteenth Amendment of the United States Constitution.

5. That Sections 824 and 1436 of the General City Code of the City of Birmingham, as applied to this defendant,

a Negro citizen of the United States, constitute a denial of due process and equal protection of law, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

6. That the said affidavit, information or complaint, does not charge any offense, which is cognizable by this Court.

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. R. Pearson, Attorneys for Defendant.

[File endorsement omitted]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20778

CITY OF BIRMINGHAM,

vs.

CHARLES BILLUPS, Defendant.

DEMURRERS—Filed October 11, 1960

Comes now Charles Billups, defendant in this cause, and demurs to the complaint in this cause, and to each and every count thereof, separately and severally, and as grounds for such demurrer sets out and assigns the following, separately and severally:

1. The affidavit or information which supports the complaint in this cause, does not charge defendant with any offense under the Constitution and laws of the State of Alabama.

2. That the complaint, affidavit or information upon which this cause is based is insufficient to support prose- [fol. 4] cution of this cause, in that no offense is charged which is cognizable by this Honorable Court.

3. That the allegations of the complaint and each count thereof are so vague and indefinite as not to apprise this defendant of what he is called upon to defend.

4. That the ordinances, Section 1436 and Section 824 of the 1944 General City Code of Birmingham, Alabama, as applied to this defendant, are invalid in that they violate Section 4, Article 1, of the Constitution of Alabama, and the First and Fourteenth Amendments to the Constitution of the United States of America.

5. That Section 1436 and Section 824 of the 1944 General City Code of Birmingham, Alabama, which support the complaint, affidavit or information in this cause, as applied to this defendant, a citizen of the State of Alabama and of the United States, constitute an abridgment of freedom of speech and assembly violative of rights and liberties secured the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

6. That the aforesaid ordinances as applied to defendant, are unconstitutional on their face in that they are so vague as to constitute a deprivation of liberty without due process of law in violation of the provisions of the Fourteenth Amendment to the United States Constitution.

7. That the said Ordinances or Statutes in this case, as applied to defendant, constitute an abridgment of privileges and immunities guaranteed defendant as a citizen of the United States, in violation of the Fourteenth Amendment to the United States Constitution.

8. That the said Ordinances, as applied to defendant, constitute a denial of equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States of America.

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. R. Pearson, Attorneys for Defendant.

[File endorsement omitted]

[fol. 5]

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20778

CITY OF BIRMINGHAM, Plaintiff,

versus

CHARLES BILLUPS, Defendant.

MOTION TO EXCLUDE THE EVIDENCE—Filed October 11, 1960

1. The complaint charging defendant, a Negro, with violation of 824 of the General City Code of Birmingham of 1944, to-wit, aiding and abetting in the violation of 1436 of the General City Code of Birmingham of 1944, to-wit, an alleged trespass upon land after being forbidden to enter or remain or after being told to leave is invalid in that the evidence establishes merely that persons alleged to have been aided and abetted by the defendant were peacefully upon the premises of various department stores, an establishment performing an economic function invested with the public interest, as a customer, visitor, business guest or invitee, and there is no basis for the charge recited by the complaint other than an effort to exclude those persons who were alleged to have been aided and abetted by the defendant from the various eating facilities because of their race or color; defendant, at the same time is being denied his right of freedom of speech and assembly in that he has been criminally prosecuted for an alleged peaceful discourse with other citizens of his race in regards to achieving first class citizenship; thereby depriving him of liberty without due process of law and of the equal protection of the laws secured by the Fourteenth Amendment of the United States Constitution.

2. The evidence offered against defendant, a Negro, in support of the complaint charging him with violation of 824 of the General City Code of Birmingham was wholly

incompetent and hearsay evidence upon the grounds that the testimony offered by the City of Birmingham was based on hearsay and that the witness, Detective Pierce, was not recounting the fact personally known to him. Further, that the testimony of the witness, Detective Pierce, was based upon the record of the proceedings in the Recorders Court and the instant proceedings being a trial de novo said records of the proceedings in the Recorders Court are only admissible for the purpose of impeachment. There being no testimony offered by the defendant, any admission of the records of proceedings in the Recorders Court in this proceeding constitutes a violation of the defendant's constitutional rights under the Laws of the State of Ala-[fol. 6] bama and under the Laws and Constitution of the United States of America specifically those rights secured by the Fourteenth Amendment of the United States Constitution.

3. That even if the evidence offered by the City of Birmingham was held to be legal it only establishes that the prosecution of the defendant was procured for the purpose of preventing him from engaging in peaceful assembly with others for the purpose of speaking, and; otherwise peacefully protesting in public places the refusal of the preponderant number of stores, facilities and accommodations open to the public in Birmingham, Alabama, to permit the defendant, a Negro, and other members of defendant's race from enjoying the access to such stores, facilities, and accommodations afforded members of other races; and that by this prosecution, prosecuting witnesses and arresting officers are attempting to employ the aid of the Court to enforce a racially discriminatory policy contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

4. The evidence against the defendant, a Negro, in support of the charge of his violation of 824 the General City Code of Birmingham of 1944, clearly indicates that those persons alleged to have acted as a result of the aiding and abetting of the defendant, had accepted an invitation

to enter and purchase articles in the various department stores in the City of Birmingham, stores open to the public, but had not been allowed to obtain food service on the same basis as that offered white persons, because of their race or color; and, that in furtherance of this racially discriminatory practice of the various department stores in the City of Birmingham, the defendant was arrested, thereby violating defendant's rights under the equal protection and due process clauses of the Fourteenth Amendment of the United States Constitution, to free speech and the right to peaceful assembly.

Oscar W. Adams, Jr., Orzell Billingsley, Jr., Peter A. Hall, Arthur D. Shores, J. Richard Reams, Attorneys for Defendant.

[File endorsement omitted]

[fol. 7]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL COURT OF ALABAMA

Appealed from Recorder's Court

(Aiding & Abetting)

Honorable Geo. Lewis Bailes, Judge Presiding

CITY OF BIRMINGHAM,

vs.

CHARLES BILLUPS.

JUDGMENT ENTRY—October 11, 1960

This the 11th day of October, 1960, came Wm. C. Walker, who prosecutes for the City of Birmingham, and also came the defendant in his own proper person and by attorney, and the City of Birmingham files written Complaint in this cause, and the defendant being duly arraigned upon said Complaint for his plea thereto says that he is not guilty; and defendant files motion to strike, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby

overruled, to which action of the Court in overruling said motion the defendant hereby duly and legally excepts; and the defendant files demurrers, and said demurrers being considered by the Court, it is ordered and adjudged by the Court that said demurrers be and the same are hereby overruled, to which action of the Court in overruling said demurrers the Defendant hereby duly and legally excepts; and the defendant files motion to exclude the evidence, and said motion being considered by the Court, it is ordered and adjudged by the Court that said motion be and the same is hereby overruled, to which action of the Court in overruling said motion, the defendant hereby duly and legally excepts; and the Court finds the defendant guilty as charged in the Complaint, and thereupon assessed a fine of Twenty-five ($25.00) dollars and costs against said defendant. It is therefore considered by the Court, and it is the judgment of the Court that said defendant is guilty as charged in said Complaint, and that he pay a fine of Twenty-five ($25.00) dollars and costs of this cause.

And said defendant being now in open Court, and having presently failed to pay the fine of $25.00 and the costs of $5.00 accrued in the Recorder's Court of the City of Birmingham, or to confess judgment with good and sufficient security for the same, it is therefore considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Charles Billups, perform hard labor for the City of Birmingham for fifteen days, because of his failure to pay said fine and costs of $5.00 accrued in said Recorder's Court, or to confess judgment with good and sufficient security therefor.

It is further considered by the Court, and it is ordered and adjudged by the Court, and it is the sentence of the Law, that the defendant, the said Charles Billups, per-
[fol. 8] form additional hard labor for the City of Birmingham for thirty days, as additional punishment in this cause.

And the costs legally taxable against the defendant in this cause amounting to forty-seven and 25/100 ($47.25) dollars, not being presently paid or secured, and $4.00 of said amount being State Trial Tax, $3.00, and Law Li-

brary Tax, $1.00, leaving forty-three and 25/100 ($43.25) dollars taxable for sentence, it is ordered by the Court that said defendant perform additional hard labor for the County for fifty-eight days, at the rate of 75¢ per day to pay said costs. It is further ordered by the Court that after the sentence for the City of Birmingham has expired, that the City authorities return the defendant to the County authorities to execute said sentence for costs.

It is further considered by the Court that the State of Alabama have and recover of the said defendant the costs in this behalf expended for feeding the defendant while in jail, for which let execution issue.

And defendant files motion for a new trial in this cause, and said motion coming on to be heard and determined by the Court, it is ordered by the Court, and it is the judgment of the Court that said motion be and the same is hereby overruled.

And notice of appeal being given, and it appearing to the Court that, upon the trial of this cause, certain questions of Law were reserved by the defendant for the consideration of the Court of Appeals of Alabama, it is ordered by the Court that the execution of the sentence in this cause be and the same is hereby suspended until the decision of this cause by said Court of Appeals of Alabama.

It is further ordered by the Court that the Appeal Bond in this cause be and the same is hereby fixed at $300.00, conditioned as required by Law.

[fol. 9]

IN THE CIRCUIT COURT OF THE
TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 20778

CITY OF BIRMINGHAM, a Municipal Corporation, Plaintiff,

vs.

CHARLES BILLUPS, Defendant.

MOTION FOR A NEW TRIAL—Filed October 11, 1960

Now comes the defendant, in the above styled cause, and with leave of the Court, first had and obtained, and moves

this Honorable Court to set aside the verdict and judgment rendered on to-wit, the 11th day of October, 1960, and that this Honorable Court will grant the defendant a new trial, and as grounds for said Motion sets out and assigns the following, separately and severally:

1. That the Judgment of the Court in said case is contrary to the law.

2. For that the judgment of the Court is contrary to the facts.

3. For that the judgment of the Court is contrary to the law in the case.

4. In that the judgment of the Court is not sustained by the great preponderance of the evidence in the case.

5. For that the Judgment of the Court is not sustained by the great preponderance of the evidence in the case.

6. For that the Judgment of the Court is so unfair, as to constitute a gross miscarriage of justice.

7. For that the sentence is excessive.

8. For that the Court erred in over-ruling objections, by the defendant to the introduction of evidence on behalf of the City of Birmingham, Alabama, in this case.

9. For the Court erred in overruling objections by the defendant to the introduction of evidence which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

10. For the Court erred in overruling objections by the defendant to the introduction of evidence, which was so biased and prejudiced that the defendant was denied the right of a fair and impartial trial.

[fol. 10] 11. The Court erred in overruling defendant's demurrers filed in this cause.

12. The Court erred in overruling the defendant's Motion to Strike the Complaint in this cause.

13. The Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham,

Alabama, in that the laws or ordinances, under which this defendant was charged and convicted, and as applied to this defendant, constituted an abridgement of freedom of speech violative of rights and liberties secured to the defendant by the First and Fourteenth Amendments to the Constitution of the United States of America.

14. That the Court erred in refusing to find that the ordinance under which this defendant was being tried, as applied to this defendant, constituted a denial of the equal protection of the laws, in violation of the Fourteenth Amendment to the Constitution of the United States of America.

15. That the Court erred in finding the defendant guilty of violating the laws or ordinances of the City of Birmingham, Alabama, in that the laws or ordinances under which this defendant was charged and convicted, and as applied to this defendant, constituted a deprivation of liberty, without due process of law, in violation of the Constitution of the State of Alabama, and the provisions of the Fourteenth Amendment to the United States Constitution.

16. The Court erred in overruling defendant's Motion to exclude the evidence in this case.

17. That it appeared from the evidence that no owner of the premises involved, had caused the arrest and prosecution of the defendant, but that such arrest was procured by the officials of the City of Birmingham, Alabama, without first having a complaint from such owner, or other person in charge of such premises.

18. For that it appears from the evidence that the defendant was not prosecuted by the owner of private property, as provided for by the pertinent laws or ordinances of the City of Birmingham, but by police officials.

19. For that it appears from the evidence affirmatively that no owner or other person in charge of the premises involved, or otherwise, having authority to do so, procured the arrest of the defendant or signed a complaint or swore out a warrant against defendant for trespass on private property.

[fol. 11] 20. For that it affirmatively appears that the defendant was not requested to leave the premises of the store involved, but was only told to go elsewhere in said store.

Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, J. Richmond Pearson, Oscar W. Adams, Jr., Attorneys for Defendant.

ORDER OVERRULING

The foregoing Motion being presented in open Court, this the 11th day of October, 1960; the same being considered and understood, the Court is of the opinion that the same should be overruled.

It is therefore, Ordered, Adjudged and Decreed that the said Motion is hereby overruled.

George Lewis Bailes, Circuit Judge.

[File endorsement omitted]

[fol. 12]

COUNSEL'S NOTE RE RECORD

APPEAL BOND TO COURT OF APPEALS (omitted in printing).

(The parties hereby stipulate that the appeal bond in the *Billups* case is identical to that in the *Shuttlesworth* case, except for the names.)

[fol. 13]

Transcript of Evidence—October 11, 1960

[omitted in printing]

COUNSEL'S NOTE RE RECORD

(That the parties hereby stipulate that the transcript of the trial proceedings in the *Billups* case is identical to that in the *Shuttlesworth* case.)

[fol. 40] Reporter's and Clerk's Certificates to foregoing transcript (omitted in printing).

[fol. 42]

IN THE COURT OF APPEALS OF ALABAMA

CHARLES BILLUPS, Appellant,

vs.

THE CITY OF BIRMINGHAM, Appellee.

ASSIGNMENT OF ERRORS

The Appellant says that there is manifest error in the foregoing Transcript of the record of the proceedings had and done in the Honorable Circuit Court of Jefferson County, Alabama, to the hurt and prejudice of this appellant, and for error assigns each of the following separately and severally:

1. The Court erred in overruling Appellant's Motion to Strike, filed in this cause. (Tr. 2, 3, 7 & 14)

2. The Court erred in overruling Appellant's Demurrers filed in this cause. (Tr. 3, 4, 7 & 14)

3. The Court erred in overruling Appellant's Motion to Exclude the Evidence, filed in this cause. (Tr. 5, 6, 7 & 33)

4. The Court erred in overruling Appellant's Motion for a New Trial. (Tr. 9, 10, 11 & 39)

5. The Court erred in allowing Detective Charles L. Pierce, a Police Officer of the City of Birmingham, to testify as to his recollection of testimony given in the Recorder's Court of the City of Birmingham, by witnesses in the trial of this matter in aforesaid Recorder's Court. (Tr. 17-31)

Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, J. Richmond Pearson, Attorneys for Appellant.

[fol. 43] Certificate of Service (omitted in printing).

[fol. 44]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 795

CHARLES BILLUPS,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

November 2, 1960

Certificate Filed

January 26, 1961

Transcript Filed

April 18, 1961

Come the parties by attorneys, and argue and submit this cause for decision.

ORDER OF AFFIRMANCE—May 30, 1961

Come the parties by attorneys, and the record and matters therein assigned for errors being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the appellant pay the costs of appeal of this court and of the Circuit Court.

[fol. 45]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

.....JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 795

CHARLES BILLUPS,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

OPINION—May 30, 1961

PRICE, Judge

This is a companion case to that of F. L. Shuttlesworth v. City of Birmingham, 6 Div. 802.

The facts set out in the Shuttlesworth case are adopted as the facts of this case, with this additional statement: "On March 30, 1960, Rev. Billups went to Daniel Payne College, in a car, where he picked up one James Albert [fol. 46] Davis, a student, and carried him to the home of Rev. F. L. Shuttlesworth, where several people had gathered, among them Rev. Shuttlesworth, his wife, and several other students from Daniel Payne College. Rev. Billups was also at said meeting." Under this testimony the jury was fully justified in finding that this defendant was part and parcel of the entire scheme.

On the authority of Shuttlesworth v. City of Birmingham, supra, the judgment is due to be, and hereby is, affirmed.

Affirmed.

[fol. 47]

IN THE COURT OF APPEALS OF THE STATE OF ALABAMA

..... JUDICIAL DEPARTMENT

October Term, 1960-61

6 Div. 795

CHARLES BILLUPS,

v.

CITY OF BIRMINGHAM.

Appeal from Jefferson Circuit Court

APPLICATION FOR REHEARING—June 14, 1961

Now comes appellant, in the above styled cause, and respectfully moves this Honorable Court to granf appellant a rehearing in said cause, and to reverse, revise and hold for naught its Judgment rendered on, to-wit, the 30th day of May, 1961, and affirming the Judgment of the Circuit Court of Jefferson County, Alabama, and to enter an Order, reversing said Judgment.

Arthur D. Shores, Orzell Billingsley, Jr., Peter A. Hall, Oscar W. Adams, Jr., J. Richmond Pearson, Attorneys for Appellant.

ORDER OVERRULING—June 20, 1961

It is ordered that the application for rehearing be and the same is hereby overruled.

Per Curiam.

[fol. 47a] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA,

SIXTH DIVISION

No. 763

EX PARTE: CHARLES BILLUPS

CHARLES BILLUPS, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

Petition for Certiorari

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, J. Richmond Pearson, Attorneys for Appellant.

PROCEEDINGS ON PETITION FOR CERTIORARI

July 5, 1961,—Submitted on Briefs

Sept. 25, 1961,—Writ denied No Opinion

Oct. 4, 1961,—Application for Rehearing filed

Nov. 16, 1961,—Application for Rehearing Overruled

[fol. 47b]

IN THE SUPREME COURT OF ALABAMA

SIXTH DIVISION

No. 763

EX PARTE: CHARLES BILLUPS

CHARLES BILLUPS, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

PETITION FOR CERTIORARI—Filed July 5, 1961

[fol. 48]

To the Honorable Chief Justice and Associate Justice of the Supreme Court of Alabama

1. Comes the Appellant, by and through his Attorneys, Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., and J. Richmond Pearson, and respectfully petitions this Honorable Court to review, revise, reverse and hold for naught that certain judgment of the Court of Appeals, on to-wit: May 30, 1961, wherein Charles Billups was Appellant and the City of Birmingham was Appellee, which judgment affirms the Judgment of the Circuit Court of Jefferson County, Alabama.

2. Your petitioner avers that application to the Court of Appeals for a Rehearing of said cause and Brief in support thereof were duly filed by your petitioner within the time required by law, and that said application for rehearing was overruled by said Court of Appeals on the 20th day of June, 1961.

3. Your petitioner respectfully shows unto the Court that this cause arose from a complaint filed by the City of Birmingham, charging your petitioner as follows:

"Comes the City of Birmingham, Alabama, a municipal corporation, and complains that Charles Billups,

within twelve months before the beginning of this prosecution, and within the City of Birmingham or the police jurisdiction thereof, did incite or aid or abet in the violation of an ordinance of the city, to-wit, Section 1436 of the General City Code of Birmingham [fol. 49] of 1944, in that Charles Billups did incite or aid or abet another person to go or remain on the premises of another after being warned not to do so, contrary to and in violation of Section 824 of the General City Code of Birmingham of 1944."

4. Your petitioner filed a Motion to Quash the Complaint and Demurrers to the Complaint, on grounds that the Complaint was so vague and indefinite as not to apprise the Appellant of what he was called upon to defend, and further, that the ordinances which formed the basis of the prosecution, as applied to appellant, constituted an abridgement of the privileges and immunities guaranteed by the Constitution of the United States and that the ordinances were unconstitutional on their face.

5. The Court overruled the Motion to Quash and the Demurrers whereupon petitioner was tried without a jury, and was found guilty as charged, and fined Twenty-five ($25.00) Dollars and costs, and sentenced to a term of Thirty (30) days of hard labor for the City of Birmingham.

6. Your petitioner filed a Motion to Exclude the Evidence, at the close of the City's case, which Motion was denied. After judgment and sentences, petitioner filed a Motion for a New Trial, which Motion was denied, and petitioner perfected his appeal.

7. Your petitioner further shows unto Your Honors that the Court of Appeals erred in affirming and failing to reverse said cause, in the following ways, to-wit: The Court based its judgment in this cause upon the opinion judgment rendered in the case of James Albert Davis vs. City of Birmingham, Six Division—797, decided May 30, 1961.

8. That the Propositions of Law involved, which petitioner claims should be reviewed and revised by this Court, are as follows:

A. That the Ordinances and Complaint, the basis of the prosecution, are unconstitutional on their face, that they are so vague, indefinite and uncertain as to constitute a deprivation of liberty, without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

b. That the Ordinance and Complaint, the basis of the prosecution, as applied to petitioner, constitute an abridgement of the privileges and immunities, and a denial of the equal protection of the laws, all in violation of the Fourteenth Amendment of the United States Constitution. [fol. 50] The Court of Appeals erred in failing to rule that the conviction of petitioner was a violation of due process of law, an abridgement of the privileges and immunities of the petitioner, in that the petitioner was denied equal protection of the law, all in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, Your petitioner most respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court, directed to the Court of Appeals of Alabama, commanding and requiring said Court to certify and send to this Court, on a day certain to be designated by this Court, a full and complete transcript of record, and all proceedings by said Court of Appeals of Alabama, in the Cause numbered and entitled aforesaid, to the end that this cause may be reviewed and determined by this Honorable Court, and that this Court thereupon proceed to review and correct the errors complained of and to reverse the Judgment of the Court of Appeals or render such Judgment as said Court should have rendered.

Petitioner prays that this Honorable Court suggest and require the Court of Appeals to Stay or recall its Certificate of Affirmance of said cause, during the pendency of this petition.

And petitioner prays for such other, further and additional relief in the premises as to this Court may seem

appropriate, and to which he may be entitled, and your petitioner will ever pray.

Respectfuly submitted,

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, Jr., J. Richmond Pearson, by Orzell Billingsley, Jr., Attorneys for Appellant.

[fol. 51] *Duly sworn to by Orzell Billingsley, Jr., jurat omitted in printing.*

Certificate of Service (omitted in printing).

[fol. 52]

IN THE SUPREME COURT OF ALABAMA

SIXTH DIVISION

No. 763

EX PARTE: CHARLES BILLUPS

CHARLES BILLUPS, Appellant,

vs.

CITY OF BIRMINGHAM, Appellee.

APPLICATION FOR REHEARING—Filed October 4, 1961

Now comes Appellant, in the above styled cause, and respectfully moves this Honorable Court to grant Appellant a Rehearing in said cause, and reverse, revise and hold for naught its Judgment rendered on to-wit, the 21st day of September, 1961, denying appellant the Writ of Certiorari and dismissing the petition, and to enter an Order reinstating appellant's petition, and directing that a Writ of Certiorari be issued out of and under the Seal of this Court, to the Court of Appeals of Alabama, to the end that this cause may be reviewed and determined by this Honorable Court.

Appellant further moves the Court to grant a Stay of Execution in this cause, during the pendency of this Application for a Rehearing.

Submitted herewith is a Brief and Argument, in support of said Motion.

Arthur D. Shores, Peter A. Hall, Orzell Billingsley, Jr., Oscar W. Adams, J. Richmond Pearson, Attorneys for Appellant, by Orzell Billingsley, Jr.

[fol. 53]

IN THE SUPREME COURT OF ALABAMA

The Court met pursuant to Adjournment

Present: All the Justices
(Lawson's Division Sitting)

6th Div. 763

EX PARTE: CHARLES BILLUPS, Petitioner

Petition for Writ of Certiorari to the Court of Appeals

RE: CHARLES BILLUPS,

v.

CITY OF BIRMINGHAM.

Jefferson Circuit Court

ORDER OVERRULING—November 16, 1961

It Is Hereby Ordered that the application for rehearing filed on October 4, 1961, be and the same is hereby overruled.

Livingston, C. J., Lawson, Stakely and Merrill, JJ., concur.

[fol. 54] Clerks' Certificates to foregoing transcript (omitted in printing).

[fol. 56]

SUPREME COURT OF THE UNITED STATES

No. 721, October Term, 1961

F. L. SHUTTLESWORTH, et al., Petitioners,

vs.

CITY OF BIRMINGHAM.

ORDER ALLOWING CERTIORARI—June 25, 1962

The petition herein for a writ of certiorari to the Court of Appeals of the State of Alabama is granted, and the case is transferred to the summary calendar. The case is set for argument to follow No. 694.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this petition.